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THIRD READING

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Bill No: AB 685  
Author: Reyes (D)  
Amended: 8/25/20 in Senate  
Vote: 21

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SENATE LABOR, PUB. EMP. & RET. COMMITTEE: 4-1, 8/5/20  
AYES: Hill, Jackson, Mitchell, Pan  
NOES: Morrell

SENATE APPROPRIATIONS COMMITTEE: 5-2, 8/20/20  
AYES: Portantino, Bradford, Hill, Leyva, Wieckowski  
NOES: Bates, Jones

ASSEMBLY FLOOR: Not relevant

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**SUBJECT:** COVID-19: imminent hazard to employees: exposure: notification:  
serious violations

**SOURCE:** California Labor Federation, AFL-CIO  
United Food and Commercial Workers Western States Council

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**DIGEST:** This bill requires employers to provide specified notices to employees and others if an employee is exposed to COVID-19.

*Senate Floor Amendments of 8/25/20* strike the language in this bill and inserted language on employee notices and Cal-OSHA COVID-19 provisions.

**ANALYSIS:**

Existing law:

- 1) Requires that every employer furnishes employment and a place of employment that is safe and healthful for the employees, and prohibits requiring or permitting any employee to go or be in any employment or place of employment which is not safe and healthful. (Labor Code §§ 6400 & 6402)

- 2) Requires employers to file a complete report of every occupational injury or occupational illness of each employee which results in lost time beyond the date of the injury or illness, or which requires medical treatment beyond first aid, with the Department of Industrial Relations (DIR). (Labor Code §6409.1)
- 3) Creates a rebuttable presumption that that a “serious violation” exists in a place of employment if the division demonstrates that there is a realistic possibility that death or serious physical harm could result from the actual hazard created by the violation. (Labor Code §6432)
- 4) Requires that, prior to the citation of a serious violation described above, DOSH must make a reasonable attempt to determine and consider, among other things, all of the following:
  - a) Training for employees and supervisors relevant to preventing employee exposure to the hazard or to similar hazards.
  - b) Procedures for discovering, controlling access to, and correcting the hazard or similar hazards.
  - c) Supervision of employees exposed or potentially exposed to the hazard.
  - d) Procedures for communicating to employees about the employer’s health and safety rules and programs.
  - e) Information that the employer wishes to provide, at any time before citations are issued. (Labor Code §6432 (b)(1))
- 5) Provides that DOSH, for the rebuttable presumption described above, may submit a pre-citation form containing the alleged violation descriptions (“AVD”) it intends to cite as serious and clearly soliciting the information specified above. If the employer does not response, the employer is not barred from providing that information at a future hearing. (Labor Code §6432 (b)(2) & (d))

This bill:

- 1) Provides that if, in the opinion of the Division of Occupational Safety and Health (DOSH), a place of employment, operation, or process, or any part thereof, exposes workers to the risk of infection with severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) so as to constitute an imminent hazard to employees, the performance of such operation or process, or entry into such place of employment, as the case may be, may be prohibited by DOSH.

- 2) Exempts AVD pre-citation and requires that the employer is responsive to DOSH inquiries in order to defend against serious violations of health and safety law due to COVID-19.
- 3) Sunsets the above provisions on January 1, 2023.
- 4) Requires that, if an employer or representative of the employer receives a notice of potential exposure to COVID-19, the employer shall take all of the following actions within one business day of the notice of potential exposure:
  - a) Provide a written notice to all employees, and the employers of subcontracted employees, who were on the premises at the same worksite as the qualifying individual within the infectious period that they may have been exposed to COVID-19 in a manner the employer normally uses to communicate employment-related information.
  - b) Provide a written notice to the exclusive representative, if any, of employees described above.
  - c) Provide all employees who may have been exposed and the exclusive representative, if any, with information regarding COVID-19-related benefits to which the employee may be entitled under applicable federal, state, or local laws.
  - d) Notify all employees, and the employers of subcontracted employees and the exclusive representative, if any, on the disinfection and safety plan that the employer plans to implement and complete per the guidelines of the federal Centers for Disease Control.
- 5) Requires that a notification described above is necessary in the following circumstances:
  - a) A laboratory-confirmed case of COVID-19, as defined by the State Department of Public Health.
  - b) A positive COVID-19 diagnosis from a licensed health care provider.
  - c) A COVID-19-related order to isolate provided by a public health official.
  - d) Died due to COVID-19, in the determination of a county public health department or per inclusion in the COVID-19 statistics of a county.
- 6) Provides that an employer cannot require employees to disclose medical information unless otherwise required by law.
- 7) Provides that an employer cannot retaliate against a worker for disclosing a positive COVID-19 test, or diagnosis or order to quarantine or isolate. Workers who believe they have been retaliated against in violation of this section may file a complaint with the Division of Labor Standards Enforcement.

- 8) Requires that the California Department of Public Health (CDPH) must make occupation and industry information received pursuant to this section available on their respective internet websites in a manner that allows the public to track outbreaks.
- 9) Provides that this bill does not apply to health facilities.
- 10) Provides that the above does not apply to employees who, as part of their duties, conduct COVID-19 testing or screening or provide direct patient care or treatment to individuals who are known to have tested positive for COVID-19, are persons under investigation, or are in quarantine or isolation related to COVID-19, unless the qualifying individual is an employee at the same worksite.
- 11) Provides that no personally identifiable employee information are subject to a California Public Records Act request or shared with any other state or federal agency.
- 12) Requires that an employer maintains records of the written notifications required in for a period of at least three years.

**FISCAL EFFECT:** Appropriation: No    Fiscal Com.: Yes    Local: Yes

According to the Senate Appropriations Committee:

- DIR notes that the fiscal impact of this bill high would be highly dependent on the pervasiveness of the COVID-19 pandemic. DIR estimates that it would incur first-year costs of \$2.7 million (for rulemaking, IT costs and enforcement), and \$2 million annually thereafter (enforcement and online system maintenance) from the Labor Enforcement and Compliance Fund. The amendments would likely reduce the bill's administrative costs; the magnitude of the fiscal change yet to be determined
- CDPH would incur General Fund administrative costs of \$967,000 in 2020-21 and \$1.1 million in the out-years.
- State departments may unknown additional costs related to notifying staff of COVID exposure.

**SUPPORT:** (Verified 8/5/20)

California Labor Federation, AFL-CIO (co-source)

United Food and Commercial Workers Western States Council (co-source)

Asian Americans Advancing Justice - California  
California Conference Board of the Amalgamated Transit Union  
California Conference of Machinists  
California Nurses Association  
California Professional Firefighters  
California Rural Legal Assistance Foundation, Inc..  
California State Council of Service Employees International Union  
California Teamsters Public Affairs Council  
Californians for Pesticide Reform  
Central California Environmental Justice Network  
Community Alliance with Family Farmer  
Engineers & Scientists of California, Local 20, IFPTE, AFL-CIO  
Environmental Working Group  
Latino Coalition for A Healthy California  
Los Angeles Food Policy Council  
Professional & Technical Engineers, Local 21, IFPTE, AFL-CIO  
Unite Here International Union, AFL-CIO  
Utility Workers Union of America, AFL-CIO  
WORKSAFE  
Worksafe

**OPPOSITION:** (Verified 8/29/20)

6Beds, Inc.  
Acclamation Insurance Management Services  
Advanced Medical Technology Association  
African American Farmers of California  
Airlines for America  
Allied Managed Care  
American Council of Engineering Companies, California  
American Pistachio Growers  
Association of California Healthcare Districts  
Building Owners and Managers Association  
California Agricultural Aircraft Association  
California Apple Commission  
California Assisted Living Association  
California Association of Health Facilities  
California Association of Joint Powers Authorities  
California Association of Sheet Metal & Air Conditioning Contractors National  
Association  
California Association of Winegrape Growers

California Attractions and Parks Association  
California Bankers Association  
California Beer and Beverage Distributors  
California Blueberry Association  
California Blueberry Commission  
California Building Industry Association  
California Business Properties Association  
California Business Roundtable  
California Cable & Telecommunications Association  
California Chamber of Commerce  
California Citrus Mutual  
California Construction and Industrial Materials Association  
California Cotton Ginners & Growers Association  
California Dental Association  
California Farm Bureau Federation  
California Fresh Fruit Association  
California Grocers Association  
California Hospital Association  
California Hotel & Lodging Association  
California Landscape Contractors Association  
California League of Food Producers  
California Life Sciences Association  
California Lodging Industry Association  
California Manufacturers & Technology Association  
California Pool & Spa Association  
California Professional Association of Specialty Contractors  
California Restaurant Association  
California Retailers Association  
California Rice Commission  
California Special Districts Association  
California State Association of Counties  
California Travel Association  
Carlsbad Chamber of Commerce  
Civil Justice Association of California  
CSAC Excess Insurance Authority  
Family Business Association of California  
Family Winemakers of California  
Far West Equipment Dealers Association  
Healthcare Distribution Alliance  
Independent Lodging Industry Association.

International Council of Shopping Centers  
League of California Cities  
NAIOP of California, the Commercial Real Estate Development Association  
National Federation of Independent Business  
Nisei Farmers League  
Official Police Garages of Los Angeles  
Olive Growers Council of California  
Orange County Business Council  
Plumbing Heating Cooling Contractors of California  
Plumbing-Heating-Cooling Contractors Association of California  
Public Risk Innovation, Solutions, and Management  
Rural County Representatives of California  
Simi Valley Chamber of Commerce  
San Diego Gas & Electric  
Southern California Gas Company  
Southwest California Legislative Council  
Technet  
Urban Counties of California  
Western Agricultural Processors Association  
Western Electrical Contractors Association  
Western Growers Association  
Western Plant Health Association

**ARGUMENTS IN SUPPORT:** The California Labor Federation, AFL-CIO and United Food and Commercial Workers Western States Council, the sponsors of this bill, argue the following *on a prior version of the bill*:

“Rarely, if ever, has California faced a crisis like the one now before us. As the virus continues to devastate workers, the public, our economy, and everything else, we are realizing that many areas of state law designed to handle normal circumstances and usual hazards are wholly inadequate to the demands of COVID-19. Nowhere are these deficiencies more evident than with worker safety and health standards.

“For example, while relevant sections of safety and health regulations offered some direction to employers focused on minimizing worker exposure to this terrible virus, control measures and personal protective equipment (PPE) specific to COVID-19 did not exist, so Cal/OSHA and CDPH had to quickly adopt dozens of industry-specific guidance’s. These documents are enforceable by both agencies and have often been used to help keep workers safe. However, no prevention

measures are entirely effective, and thus thousands of workers have suffered COVID-19 exposure on the job. Many, tragically, have lost their lives.

“AB 685 (Reyes) will clarify that employers must notify affected workers, their union(s), Cal/OSHA, CDPH, and the relevant local health agencies when workers have been ‘exposed to COVID-19’. This phrase is defined as any worker dying from COVID-19 or receiving, from a licensed health provider, a positive test, diagnosis, or order to quarantine.

“This bill does not require employers to comply with any new health and safety standard. It does not require any additional investment towards PPE or control measures, and it does not create any new private rights of action. It simply requires effective notification to the identified entities so that those entities can make informed choices on how to help us all survive the pandemic. It is the least that we can do for those risking their lives to keep us fed, cared for, and otherwise safe during these incredibly difficult times.”

**ARGUMENTS IN OPPOSITION:** A coalition of employers, including the California Chamber of Commerce and the League of California Cities, argues the following in opposition *on a prior version of the bill*:

“The vagueness discussed above regarding what constitutes exposure creates the potential that some employers will provide warnings constantly to avoid liability for failing to warn. However, such over-warning negates the benefits intended by AB 685, as it will become background noise for employees, and pointlessly dilute the data of Cal/OSHA and the Department of Public Health.

“... AB 685 also includes a ‘name and shame’ provision, requiring DOSH and the State Department of Public Health to publish information received on their website including tracking ‘the number of COVID-19 cases reported by any workplace and the occupation of the employees involved.’

“... In addition, publication poses potential privacy concerns, as reporting an individual’s “occupation” and worksite may render the person identifiable. For example, a location may have only one or two managers or technicians. Merely identifying that a manager at a specific worksite was ‘exposed’ would implicitly identify the individual on a public website as having a potential medical condition. Of course, this concern depends on implementation – again, AB 685 is vague here – but we do not see a medical or social benefit to including the specific occupation of the person involved, any more than there is a benefit to shaming both good and bad employers.

“... In conclusion – we appreciate the good intentions of the author to try to help workers in this pandemic – but we find AB 685 to be a confusing and ineffective bill which will not help public safety and will put potential criminal liability on public and private employers.”

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8/29/20 22:33:07

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